

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 6:21-cv-00425-JDK

**DEFENDANTS' RENEWED MOTION FOR LEAVE
TO APPEAR BY VIDEO OR TELEPHONE CONFERENCE**

The Defendants respectfully renew their request that the Court grant them leave to appear at the hearing scheduled for February 4, 2022, by video or telephone conference. Despite the best efforts of the undersigned counsel, weather conditions have rendered it impossible for him to travel to the Court to appear in person at the hearing tomorrow. The undersigned counsel has conferred with counsel for the Plaintiffs, who state that they consent to this motion. Good cause supports this request for the following reasons.

1. This Court has scheduled a hearing on the pending cross-motions for summary judgment for February 4, 2022. ECF No. 22.

2. The undersigned counsel scheduled travel from Washington, DC, to Dallas, Texas, on the morning of February 3, and from Dallas, Texas, to Tyler, Texas, by rental car on the same day to appear for this hearing. His reservation was cancelled this morning. The undersigned counsel rebooked his flight twice; each of those flights was cancelled as well. The undersigned counsel then made a reservation for the next available flight, which was scheduled to arrive in Dallas at

9:40 a.m. on February 4. This evening, the undersigned counsel learned that that flight has also been cancelled. The next available flight would arrive in Dallas at 3:30 p.m., which would be too late to allow for travel to Tyler, Texas for a hearing tomorrow.

3. The undersigned counsel was unable to travel prior to February 3, due to both personal commitments and the need to complete and file the reply brief on the Defendants' cross-motion for summary judgment, which was due on February 2.

4. The Defendants do not seek a continuance of the hearing date, but would be amenable to appearing in person on another date, if that is the Court's preference.

5. The Defendants have previously filed a motion to appear by video conference, which the Court denied. ECF No. 105. In the same order, this Court rescheduled the hearing for 2:00 p.m. to accommodate the undersigned counsel's travel difficulties. The Defendants appreciate this accommodation; however, as noted, the undersigned counsel is unable to appear in person for the hearing even at the rescheduled time.

6. In its order, the Court also noted that, "[s]hould weather or road conditions require further rescheduling of the hearing, the Court will issue an appropriate order." The Defendants respectfully submit that these new developments warrant leave to appear by telephone or video conference, or, if the Court so chooses, a rescheduling of the hearing.

WHEREFORE, the Defendants respectfully request that the Court grant them leave to appear at the February 4 hearing by video conference or by telephone conference.

Dated: February 3, 2022

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the Defendants has complied with the meet and confer requirements of Local Rule CV-7. On February 3, 2022, counsel for the Plaintiffs confirmed that they consent to the relief requested in this motion.

/s/ Joel McElvain
JOEL McELVAIN

CERTIFICATE OF SERVICE

I hereby certify on this 3rd day of February, 2022, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Joel McElvain
JOEL McELVAIN